Supreme Court, U.S.
FILED

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No.

IN THE
Supreme Court of the United States
OCTOBER TERM, 1998

WILSON M. KRUEGER, JR.
PRO SE
Petitioner,

vs.

TOGO D. WEST, JR.
SECRETARY OF VETERANS AFFAIRS
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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5888

QUESTIONS PRESENTED

1)Whether the knowledge of the non-treatment of Hypertension and Coronary Ischemia by the United States Air Force and the VA is breaking the fourteenth amendment under the "Right to Life" clause? 2)Whether the Veterans Administration, a "combination agency", as the administrator of all records, adjudicator, judge, investigator, creator of the "Statement of Case" against the veteran, is obligated to inform said veteran of his rights in regard to timeliness of filing to the next court level and further that he is completely apprised of the court and medical system with regard to the Veteran Administration's responsibility systems? Did the VA misconstrue the term well-grounded (Disabled American Veterans article, Appendix D)? Does the VA control all documents going to all Courts? Would the Court please read COVA's denial, send records to this veteran required by Rule 39 of this Court (Appendix D)? PAGE X

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PETITION FOR WRIT OF CERTIORARI

Petitioner Wilson M. Krueger, Jr. respectfully pray that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[X] For cases from federal courts: The opinion of the United States Court of appeals appears at Appendix A to the petition and is reported at UNKOWN.

JURISDICTION

[X] For cases from federal courts: The date on which the United States Court of Appeals decided my case was July 28, 1998. No petition for rehearing was timely filed in my case. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Title 18 U.S.C.A. 1503, 1505, and 2071 are set forth in Appendix E herein.

QUESTION 1)

STATEMENT OF THE CASE

The Department of Veterans Affairs (VA) did not allow this veteran and other veterans to be heard under the Fourteenth Amendment, under the Due Process and Right to Life Clauses. The VA broke 18 USC § 1503 (Influencing) by allowing perjured information to be presented to the judges of different Courts. The VA broke 18 USC § 1505 (Obstruction) by leaving out a hospital report that shows a bad EKG for coronary Ischemia. The VA broke 18 USC § 2071 (Mutilation) by mutilating a document to the point that six high blood pressures could not be read. The VA broke 18 USC § 2071 by removal of a hospital report and replaced it with the perjured report of a VA doctor. The VA has "lay" people to evaluate an EKG's, when they can not read an EKG, calling them negative when they are positive (a Cardiologist). The VA has "lay" people evaluate high blood pressure readings that last 4.5 years of service and call them "normal"; however, two doctors call them Hypertensive. The VA makes all effort to insure benefits will not be paid to the veteran. COVA will open a closed case to allow information into the case, without letting rebuttal of the evidence to take place. The VA does not service a veteran fairly. All service must contain vital information for Due Process to take place. The only agency that is served by ambiguity is the VA. Point of Law: "The very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation." Cafeteria & Restaurant Workers Union v. McElroy, 367 U.S.C. § 886, 894-95 (1961).

I would like to cover "Right to Life" under the Fourteenth Amendment in relation to my case. This subject has two elements; number of years and quality of those years. Point of law:

> "The right to enjoyment of life and liberty and to acquire and posses property are 'fundamental rights' of citizens of several states not dependent upon the constitution or government for their existence but this amendment although prohibitory

in language, contains a necessary implication of a positive immunity or right against state action depriving a person of such fundamental rights without due process of law." Culp v. U.S. C.C.A. Ark 1942 131 F.2d

Charge Against the USAF and VA

The USAF and the VA have taken a large portion of my Right to Life and all quality of life away without Due Process. They have not treated the Hypertension and Coronary Ischemia that was present in my medical service records (1969-1974 for the USAF and 1974-1993). This veteran has not been heard, due to the fact the Courts were not present evidence vital to the case. The Rating Decision, dated 13 JUN 1997, found me service connected for, "ARTERIOSCLEROTIC HEART WITH MYOCARDIAL INFARCTION AND ANGINA: HYPERTENTION". COVA, on 19 NOV 1997, Memorandum Decision, stated that I was not service connected for the above items. COVA denied service connection for the above after the VA granted service connection. COVA was well aware of the Rating Decision by allowing the Secretary to open sealed records to make a statement to that effect.

This year an estimated 1,100,000 American's will have a new or recurrent coronary attack. About one third of them will die and 27% of those that are left will die within one year. This is due to the disabling factors of a heart attack. Stroke will claim another 17.33 %. Math for the above statement, all percentages 33 1/3%, 27% and 17.3%=77 2/3%, is from the American Heart Association (AHA). For each incident, a person has 23 1/3-% chance to live after one year. All base figures are from separate studies.

→ INSERT FROM PAGE i

History from Oct 1953 - 31 Jan 1966:

In OCT 1953, I joined the USAF. My first enlistment was marred by an accident of a compressed fracture of the 12th thoracic vertebrae. I had a normal heart and blood vessels, without any high blood pressure readings according to the USAF and VA.

According to the USAF and VA, I did not have any major health problems until 3 JUN 62 at which time I broke the right wing of my sacrum. I was in and out of the hospital four times because of the back injury (4 JUN- 27 JUN 1962, 1 APR - 5 APR 1963, and 14 MAY - 25 MAY 1964 and 24 AUG - 16 SEP 1965). To my knowledge, there was not anything wrong with my heart or arteries in those five-hospital admittances. The USAF and/or VA have lost all of my hospital records. The USAF and the VA concede that my coronary arteries where good upon joining the USAF in OCT 1953.The only thing I ever requested, was an "Impartial Tribunal."

> [1]"Impartial Tribunal. Just as in criminal and quasi-criminal cases, 'an impartial decision maker' is an 'essential' right in civil proceedings as well \285\. The neutrality requirement helps to guarantee that life, liberty, or property will not be taken on the basis of an erroneous or distorted conception of the facts or the law . . . At the same time, it preserves both the appearance and reality of fairness . . . by ensuring that no person will be deprived of his interests in the absence of a proceeding in which he may present his case with assurance that the arbiter is not predisposed to find against him \286\. Thus, the conduct of deportation hearings by a person who, while he had not investigated the case heard, was also an investigator who must judge the results of others' investigations just as one of them would some day judge his, raised a substantial problem which was

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[1] 284\Tumey v. Ohio, 273 U.S. 510 (1927); In re Murchison, 349 U.S. 133 (1955). \285\Goldberg v. Kelly, 397 U.S. 254, 271 (1970). \286\Marshall v. Jerrico, 446 U.S. 238, 242 (1980); Schweiker v. McClure, 456 U.S. 188, 195 (1982). \287\Wong Yang Sung v. McGrath, 339 U.S. 33 (1950). \288\Schweiker v. McClure, 456 U.S. 188, 195 (1982); Withrow v. Larkin, 421 U.S. 35, 47 (1975); United States v. Morgan, 313 U.S. 409, 421 (1941).

> resolved through statutory construction \287\. But [[Page 1743]] there is a 'presumption of honesty and integrity in those serving as adjudicators,'\288\ so that the burden is on the objecting party to show a conflict of interest or some other specific reason for disqualification of a specific officer or for disapproval of the system. It is not, without more, a violation of due process to combine investigating and adjudicating functions in the same agency, \289\ although the question of combination of functions is a substantial one in administrative law \290\."

History Between 31 Jan 1966-1 Jun 1974:

The first piece of evidence I would like to present to the court is a letter that show a diagnosis of "coronary insufficiency" written by the Aberdeen-Monroe County Hospital. This negates the VA's Statements given to the court. The VA could have retrieved this information, but did not. They had the correct date and location of hospital admission from the USAF records. The VA is the investigating agency for the veteran, all the VA had to do was write the letter. I did sign several release forms for the VA to complete this operation. I did not find this out until I read the COVA report 96-0212, that the date of hospitalization was 31 JAN 1966. The Aberdeen hospital kept their records on microfiche. I needed the correct date of the hospitalization to enlist the hospital's help, so I wrote a letter that VA should have written. At this time I wish to enter the hospital record into evidence (see Appendix D), since the error is the VA's lack of investigation and the USAF for not making it a part of the medical file. This action on the part of the VA and USAF is against 18 USC § 1503 (influencing the court), 1505 (obstruction the court) and 2071 (concealment from the court). This will count as the first incident leaving me a 23 1\3- percent chance to live.

The 31 JAN 1966 - Point 1

I would like to go over this first attack that Dr. Gallogly a VA doctor (ignored the diagnoses of "coronary insufficiency"); Regional Board, BVA, and COVA did not evaluate. But did:

A) Not evaluate the first heart case of 31 JAN 1966.
B) Not use the diagnosis of Coronary Insufficiency.
C) Not mention the abnormal EKG that stated, "Coronary Insufficiency due to toxic Pulmonary Obstruction."
D) Not mention the chief complaint: "Acute pain in chest radiating into the left arm with marked shortness of breath one hour in duration."
E) Not mention the pain upon breathing: "This pain radiated into the neck and pain on expiration and inspiration was excruciating."
F) Not explain to the Courts that these are the primary characteristic symptoms of an angina pectoris attack.

The VA and Dr. Gallogly did not give a fair evaluation; they hid critical information to my case and lied. This action on their part broke 18 USC § 1503, 1505, and 2071 committing medical malpractice and the Fourteenth Amendment by not allowing Due Process and my Right to Life. See Hospital Report Appendix VII, D

Point of Law:

> "18.80(9), Gross or negligence and matter of common knowledge, W.D.Pa. 1987, under Pennsylvania law, medical malpractice plaintiff, to satisfy burden of showing that defendant failed to exercise reasonable skill and knowledge required under circumstances, must introduce expert medical testimony to show defendant's conduct varied from accepted medical practice, unless matter under investigation is so simple, and lack of skill or want of care so obvious, as to be within range of ordinary experience and comprehension of even nonprofessional persons. Geibel v. U.S., 667 F.Supp. 215, affirmed 845 F.2d 1011"

This point of law supports my contention, in all eight cases contained in this document, that the USAF and VA doctors overtly mishandled this case by non-treatment of high blood pressure and coronary ischemia. The VA administration did not write the very important letter to retrieve this record for the first place.

I was transferred to Columbus AFB on 1 FEB 1966 without any more tests, from the Aberdeen or USAF hospitals. If the USAF and Aberdeen hospitals would have given more tests they might have found out if the trouble was from the heart or toxic fumes (this is from my knowledge since the VA and USAF have lost the records). This attack may have been the start of my heart troubles, since there has not been any deaths in my family from this disease. This was the first known angina pectoris attack, due to coronary insufficiency. I had all of the symptoms of a M.I., except enzyme change. This will be counted as cardiac incident, number one.

The 8 Oct 1973 – Point 2

I was admitted to the Blytheville AFB hospital on 8 OCT 1973, to rule out a M.I. (third paragraph of the hospital report, by Dr. R. H. Choplin), I would like to enter this hospital report into evidence (see Appendix D). PAGE XVIII This hospital report was in the hands of the VA and had a lot more information then Dr. Gallogly, perjured report. The VA choose to show the Courts perjured information. The below list (A-J) documents perjured statements or omissions made by Dr. Gallogly of the VA.

A) Omitted attack started on hour before admission
B) Made false statement of "mild shortness of breath"
C) Blood pressure 190/130 omitted from record
D) Falsely stated "anxiety" was cause of attack
E) Reported only "one episode" of angina pectoris attacks when there were two
F) Only reported "one episode" of chest cramping when there were two
G) Did not report three days in hospital

H) Omitted admission to hospital for M.I.
I) Omitted that I was given 100 mg Demerol for chest pain
J) Omitted daily prescription upon hospital discharge

The ten statements/omissions made by Doctor Gallogly were false. The different boards Regional Board, BVA, and COVA in the VA had to be aware of the discrepancy because the hospital report was C-File stamp. The C-File has all the information from service and VA, that each judge must study to make the honest decision. All of the above symptoms are characteristics of an angina pectoris attack. This evidence should be sufficient to provide any VA Court judge or administrator, who has experience in judging medical heart problems, enough information to evaluate and diagnosis this hospitalization as being caused by a coronary pectoris attack. The VA Regional Board, Board of Veterans Appeals and Court of Veterans Appeals lost its honesty, integrity and broke the Due Process clause in the Fourteenth Amendment by picking Dr. Gallogly's perjured report over the true hospital report. To continue:

A) Dr. Choplin gave me a Double Master's Treadmill Test, on 21 JAN 1974 that was positive for coronary ischemia (blocked coronary arteries). The VA committed perjury by stating "...and a subsequent double Master's EKG were both negative". Whoever read the EKG for the VA was committing perjury. The person had to be a doctor, since a lay person in the VA would not or should not read a complex tests i.e. EKG. At this time I would like to introduce Dr. Chavez's, a cardiologist, letter (Appendix D) to clear up this matter. COVA was well aware of this letter. This action on the VA's part is against 18 USC § 1503, 1505, 2071 and the Fourteenth Amendment Due Process Clause.
B) In two different reports made out by Dr. Choplin and signed by him (after he signed the hospital report on 19 OCT 1973) on 21 JAN 1974, he refers to the Provisional Diagnosis as "Coronary Artery Disease." In one, he states that the Double Master's "may be positive." In the other he states "? Double

Masters." The only VA people that looked at my record were lay people or a doctor that committed perjury. If it was "lay" people (caseworkers, lawyers, judges, etc) we must look at Espiritu v Derwinski, 2 Vet. App. 492 (1992). Therefore, the VA claim is not well grounded. Since a doctor (Dr. Choplin) questions his reading of an EKG, how can the Regional Board member, Board of Veterans Appeals (BVA) board members and or a Court of Veterans Appeals board members call the same reading negative?

On 12 FEB 1974 I was sent to Scott AFB to the cardiology clinic and was examined by Dr. Cashion an USAF doctor. He repeated the double Master's Treadmill test and found it negative. Dr. Cashion:

A) Did not mention that my high blood pressure was elevated to start with, 155/95 and that all blood pressures were high except the last reading.

B) Did not mention that the EKG, which was given on 21 JAN 1974, was positive for Coronary Ischemia. He is a Cardiologist, knew how to read an EKG, and did not put it unto the record. We must assume that he did read the EKG or with held the information from the Court. I was sent to Scott AFB for evaluation of my heart. It is a requirement of the USAF, if a person develops a questionable disease in one of the major areas after a discharge physical, he must repeat that portion of the physical before discharge. Dr. Cashion had to have all of the high pressure readings, EKG's, etc.

C) Did not mention that I had hypertension the last 4.5 years of service at that time.

D) Did not mention that 190/130 is classified as very severe high blood pressure (Dr. DeBakey book) and hypertension medicine should have been started (This is in accordance with Yale School of Medicine, Cardiology Department).

E) Did not mention that I had all of the characteristics of a M.I., except the enzyme change.

F) Did not mention that the characteristic of 8 OCT 1973 was the same as an Angina Pectoris attack.
G) Did not mention that it is not uncommon to pass a double master's treadmill after it was positive.
H) Did not mention that when you have a positive for Coronary Ischemia, the next normal test should be an angiogram, in my case.
I) He stated that I was fit for worldwide and remote duty. This was a false statement because of my back injury. He did not look at my records.

In reading Dr. Chavez's letter Dr. Cashion erred in the following ways, I quote, Dr. Chavez:

1) "revealed 2mm of ST segment depression in leads II and aVF and 3 mm in V5. This would consistent with objective evidence for coronary ischemia."
2) "During that cardiology visit on January 24, 1974,his blood pressure was 155\95. Although no formal diagnosis of hypertension was made at this time, this was an error."
3) "Given his symptoms of angina and one abnormal treadmill study, I think I would have...performed a cardiac catheterization..." Dr. Cashion broke 18 § 1503, 1505, 2071, by hiding critical facts that would help medical treatment and the Courts decision. This case and the other statues above, Geibel v. U.S., 667 F. Supp. 215, affirmed 845 F.2d 1011, will support each of my charges of medical malpractice and the Fourteenth amendment under Due Process clause and Right to Life clause. 5 1/3 % to live

<u>The 21 AUG 1974 - Point 3</u>

I will quote the complete case that the VA made in my behalf to the VA Courts: In case #1 Dr. Gallogly ignored my first bad EKG. In case #2 Dr. Gallogly falsified the hospital report (above) by stating under oath, "One episode of cramping, right peristernal chest pain, Oct 1973 associated with anxiety, mild shortness of breath and diaphoresis".

Dr. Gallogly ignored my first bad EKG. See Geibel v. U.S., 667 F. Supp. 215, affirmed 845 F.2d 1011, Medical Malpractice, perjury and withholding evidence from the Court. He broke 18 § 1503, 1505and 2071. The last three cases are tied together by at lease one of the two pieces of evidence. 1) They show the perjury of Dr. Gallogly 2) they show how the VA does not investigate for the veteran. 3) They show how the VA withholds evidence. 4) They show that the present system the VA has without any checks and balances is not working to benefit the veteran or Congress's wishes.

The 12 DEC 1989 - Point 4

On 12 DEC 1989, Dr. Richtsmeier, VA Chicago, was giving me a rating evaluation examination for my back (the social security found me 100% disabled since 1985, when I could not work anymore) when he noticed that I had several high blood pressure readings and reported this in his letter. Some of the readings came from the COVA report, my VA medical records before the VA at Milwaukee VA culled them out. The following are all blood pressure readings that I could find for 1989:

A) 9 FEB 1989 150/90 High blood pressure reading
B) 21 FEB 1989 140/94 High blood pressure reading
C) JUL 1989 134/84 Normal blood pressure reading
D) OCT 1989 154/96 High blood pressure reading
E) 1 DEC 1989 166/90 High blood Pressure reading
F) 7 DEC 1989 168/94 High blood pressure reading
G) 12 DEC 1989 170/94 High blood pressure reading

The overall average was 155/92. This is higher than the USAF or VA requires (140/90) to take a closer look. Dr. Richtsmeier Regional Board, BVA and COVA did not:

A) Setup a clinic appointment for treatment of hypertension This is a requirement by any school of cardiology in the U.S. The VA refuses to give benefits for anything 100 mm Hg diastolic or above and ignore any systolic reading. This is medical malpractice at its worse.

B) get the USAF records to see if I had heart trouble in service
C) follow through with high blood pressure readings
D) Get help from a VA cardiologist if needed.

I charge Dr. Richtsmeier Medical Malpractice in-accordance-with, Geibel v. U.S., 667 F. Supp. 215, affirmed 845 F.2d 1011, and the Fourteenth Amendment under the Right to Life clause. The VA and the USAF were required to evaluate my complete medical records by qualified persons.

The SEP 1993, - Point 5

In SEP 1993 I had a M.I. at Brainerd Medical Center, MN, damage was done to my heart. About 1% chance to live. From this point on I am living on borrowed time.

25 JUN 1990 - 29 MAR 1993 - Point 6

I moved to Brainerd, MN in 1990. Because the VA did not have a Clinic close enough for me to receive treatment, I was required to go to a VA approved clinic. The VA was required to receive reports from the attending physician to insure proper care and cost, in-accordance-with the VA regulations.

The following is an example of the VA showing utter disregard for a veteran, the American Court System, and the Constitution. The VA received a document from Brainerd Medical Center that gave evidence of several high blood pressure readings before my M.I. the VA took that same document and blacked out the six high blood pressure readings. The high blood pressures that were before my M.I., dated 25 JUN 1990 through 29 MAR 1993 are, in chronological order: 172/96, 170/96, 148/84, 194/104, 160/86, 170/98, 180/112. All of the previous high blood pressures were blacked out with a marker, except the 148/84 dated 20 NOV 1990. The VA then took the mutilated evidence and presented to all VA Courts. They would have presented that document to all outside Court if it were not correct by the veteran. I have copies of both the mutilated evidence presented to the court and Brainerd

Medical Centers with all blood pressures and the VA stamp copy from the C-File. I have sent these records to VA I.G. and several agencies outside the VA to prosecute the VA. All agencies had referred me back to the VA.

> "The neutrality requirement helps to guarantee that life, liberty, property will not be taken on the basis of an erroneous or distorted conception of the law'...Marshall v. Jerrico, 446 U.S. 238, 242 (1980); Schweiker v. McClure, 456 U.S.188, 195 (1982)...but there is a 'presumption of integrity in those serving as adjudicators' Schweiker v. McClure, 456 U.S. 188, 195 (1982); Withrow v. Larkin, 421 U.S. 35, 47 (1975); United States v. Morgan, 313 U.S. 409, 421 (1941)... although the question of combination of functions is a substantial one in administrative law."

The VA broke 18 USC § 1503, 1505 and 2071, the laws and statues in the above cases, and Fourteenth Amendment under Due Process.

The 9 SEP 1996 - Point 7

The VA cardiologist refused to treat my coronary ischemia and I was forced to seek medical care from another cardiologist at another medical facility (Geibel v. U.S., 667 F. Supp. 215, affirmed 845 F.2d 1011). Again the VA will not give benefits to a person that has diastolic of less than 100mm Hg nor treat them in my case.

The 12 MAR 1997 – Point 8

Five-vessel bypass was performed because of uncontrollable angina. At this time using the AHA figures, I had less than 1% to live.

Summary of Eight Points

The VA, with its gross abuse, loss of ethics (both medical and adjudicative), erroneous judgement and total disregard of the United States of America Constitution, under Due Process and Right to Life clauses. That is guaranteed by the fourteenth amendment, Bill of Rights, 18 USC's, 38 USC's, 38 CFR's, VA's guide lines (regulations), House of Representatives, Report 105-52 and Public law 105-111, has made it a totally impossible for a veteran to get an "Impartial Tribunal". See list below:

1) Destruction of high blood pressures readings. Example: The Brainerd, MN report, where six high blood pressures were blacked out.
2) Leaving out high blood pressure readings. Example: Dr. Richtsmeier diagnosis of high blood pressure on 12 DEC 1989. This was all after Dr. Richtsmeier made the diagnosis for high blood pressure.
3) Presented the Courts with false information Example: The VA under oath stated, that the EKG given on 21 JAN 1974 was negative, when it is positive. This is a perfect example of objective evidence being destroyed by the VA.
4) Totally ignoring the characteristics of coronary heart disease or angina pectoris. Example: The two in-service hospitalizations on 31 JAN 1966 and 8 OCT 1973 for chest pain.
5) Failed to submit hospital reports that were favorable to my case. Example: Dr. Gallogly false statement on 21 AUG 1974 for 31 JAN 1966 and 8 OCT 1973 with the blood pressure of 190\130 in the hospital report.

In the Memorandum Decision, dated 19 NOV 1997, case No. 96-212, the Secretary made a statement, page 4, 2nd paragraph, I quote:

> "The Court notes that the Secretary has advised that service connection for hypertension was granted subsequent to this appeal and therefore, the issue before the court is moot."

The only place, the Secretary could have received that information is from the Rating Decision dated 13 JUN 1997. This information was admitted to the record after the record was sealed. However, I was not allowed to enter Dr. Peterson letter (Appendix D) dated 26 JUN 1996 and Dr. Chavez's letter, dated 14 AUG 1997 that would give a true medical opinion and would show the many medical errors made by the VA and USAF. It is my contention that only "lay" people adjudicated this case. The people could not read an EKG or notice the high blood pressures, etc. Two doctors stated that they were hypertensive in 1969 and one stated that coronary ischemia was present on 21 JAN 1974. Therefore, the VA evaluators were committing perjury or were uneducated in evaluating heart conditions. The latter case would against. See Espiritu v Derwinski, 2 Vet. App. 492 (1992).

Dr. Chavez's letter was written and sent about 14 AUG 1997. COVA opened the records to receive the Secretary's statement some time between 13 JUN 1997 and COVA's Rating Decision on 19 NOV 1997 that denied service connection for hypertension. The Rating Decision did use Dr. Peterson's statement "specifically, between 1968 and 1974". When referring to inclusive period of hypertension development in service. The COVA knew about both letters and refused to have them both entered into evidence, but illegally open the records for the Secretary to enter in the results of Dr. Peterson letter. At this time, I ask the Court to put both letters into evidence. The only different evidence that was presented to the two doctors was that Dr. Peterson did not have the Rating Decision and Dr Chavez did. They both stated that hypertension was present in service between 1969 and 1974 and more likely than not caused my M.I. in 1993. Both doctors, Peterson and Chavez, were given the same information that the VA had:

1) in-service blood pressure
2) Dr. Cashion's and Dr. Choplin's reports
3) 8 OCT 73 hospitalization
4) Bad EKG test of 21 JAN 1974.

Again, the VA needs to look at 38 CFR § 3.309(a) Disease subject to presumptive service connect. I quote, "since hypertension is an early symptom long preceding the development of those diseases in their more obvious forms... Authority; 38 USC § 1112." Again, a blood pressure of 190/130 is a definite symptom of hypertension. Then the VA should look at 38 CFR § 3.358(a), quote:

> "Where it is determined that there is additional disability resulting from a disease or injury or aggravation of an existing disease or injury suffered as a result of ... medical or surgical treatment... compensation will be payable for such additional disability."

Case Not Being Moot

The Secretary contends that this case is moot because I would not receive any additional compensation. I contend that if I am granted disability dating back to 2 JUN 1974, that I was entitled coming out of service, today I would be entitled to additional compensation and this case would not be moot. I should be granted disability dating back to 2 JUN 1974 in-accordance-with:

1) 38 USC § 1112 Authority for 38 CFR § 3.309
2) 38 USC § 1151 Authority for 38 CFR § 3.358.
3) 38 USC § 5110(d) Authority for 38 CFR § 3.3400.
4) 38 CFR § 3.309(a), "...hypertension is an early symptom long preceding the development of those diseases in their more obvious forms."
5) 38 CFR § 3.358,

> "Where it is determined that there is additional disability resulting from a disease or injury or aggravation of an existing disease or injury suffered as a result of ... medical or surgical treatment... compensation will be payable for such additional disability."

Non-treatment is treatment.

6) 38 CFR § 3.400ii: Where the requirements for service connection are met during service, the effective date will be the day following separation from service. The VA did find service connect and cut orders to that effect. I did apply for disability within one year after discharge in-accordance-with VA Regulations.
7) Public Law 105-111, Clear and Unmistakable Error 38 CFR § 3.105(a), Revision of decisions and the intent of that law House of Representatives, Report 105-52. The USAF and VA made several errors.

> "House of Representatives, Report 105-52, to allow revision of veterans benefits decision based on a clear and unmistakable error, The VA system is unlike any other adjudicative process. It is specifically designed to be claimant friendly. It is non-adversarial; therefore, the VA must provide a substantial amount of assistance to a veteran seeking benefits. When the veteran first files a claim, VA under takes the obligation of assisting in development of all evidence pertinent to that claim. There is no true finality of a decision since the veteran can reopen a claim at any time merely by presentation of new and material evidence."

The Rating Decision stated that I should be 60% disabled, effective 6 AUG 1996. If this was the correct effective date, disability rating, and if the Courts find in favor of the VA and USAF for that date. It would pay the USAF and VA not to treat hypertension and coronary ischemia (as they did in my case). Therefore, the USAF or the VA would not pay any disability awards until the veterans discovered the disease and lived through the heart indicants with the mortality rate of about 78%, to put in his paper work, with the effective date of that paper work. This would be against the Fourteenth amendment, Right to Life and Due Process clauses. Point of law on effective date:

> "Whereas, in Goldberg v. Kelly, 397 U.S.254, 264 (1970) the effect of termination of welfare benefits could be 'devastating,' a matter of loss of food and shelter, thus mandating a pre-deprivation hearing, the termination of Social Security benefits would be considerably different, inasmuch as they are not based on financial need and a terminated recipient would be able to apply for welfare if need be. Moreover, the determination of ineligibility for Social Security more often turns upon routine and uncomplicated evaluation of data, reducing the likelihood of error, a likelihood found significant in Goldberg. Finally, the administrative burden and other societal cost involved in giving Social Security recipients a pre-termination hearing would be high. Therefore, a post-termination hearing, with full retroactive restoration of benefits, if the claimant prevails, was found satisfactory." Mathews v. Eldridge, 424 U.S. 319, 339-49 (1976).

The VA would negate all regulations above starting with 1) 38 USC § 1112 though House of Representatives Report 105-111.

The VA has refused to give me a "Statement of Case" to see what the VA would use against me though this tribunal. They refuse to give the veteran any like cases, to quote, that may help them develop their case. The VA has a complete one-sided affair:

1) VA pays the Judges; 2) Write up the cases; 3) Do the research for the veteran; 4) Will not let the veteran have information to assure his right under the Fourteenth Amendment, 5) Lose paper work, 6) Cull out paper work that is detrimental to the VA case, 7) Manufacture evidence that is harmful to the veterans case 8) Mutilates evidence. 9) Close the records and than state, the veteran needs a doctor opinion. "Discovery...the evidence used to prove the Government's case must be disclosed

to the individual so that he has an opportunity to show that it is untrue." Green v. McElroy, 360 U.S. 474, 496 (1959), quoted with approval in Goldberg v. Kelly, 397 U.S. 254, 270 (1970).

1) A Rating Decision, dated 13 JUN 1997, found service connection for "ARTERIOSCLEROTIC HEART DISEASE WITH MYOCARDIAL INFARCTION AND ANGINA; HYPERTENSION." However, COVA denied my disability for hypertension on 19 NOV 1997, with the full knowledge of the Rating Decision, that the Secretary of Veterans Affairs informed them and two doctor reports that they knew about. COVA denied what the VA has already put into orders.
2) There are two portions to a disability Rating Decision, effective date, and the percentage of disability. The VA states that I should be 60 % effective 6 AUG 1996. Dr Chavez and VA regulations state that I should be 100% effective 2 JUN 1974.
3) I sighted: 38 USC § 1112, 1151 and 5110, 38 CFR § 3.309(a), 3.358 and 3.400 ii, and the House of Representatives, Report 105-52, which give the scope and limitations to Public Law 105- 111, if the disease was developed in the service.
4) Point of Law: "Therefore, a post-termination hearing, with full retroactive restoration of benefits, if the claimant prevails, was found satisfactory. Mathews v. Eldridge, 424 U.S. 319, 339-49 (1976)."

QUESTION 2)

My failure to respond to the Court in a timely manner would benefit the VA only. They failed to apprize me of the length of time that I had to respond to the Court. Since I had no other means of leaning the Courts requirement. The VA Court was always informed me of the number of days that I had before the next Court date (90-120 days for the VA normally).

The VA has complete control over the information received by the veterans. When applying for any benefits The VA must give the veteran explicit instructions on their educational level. We need to know what, how and when in a language that we

understand. If we are given court rules, we do not have access to law books nor the degree to read and understand them. This level must be of a non-lawyer type, to insure that the veteran may receive Due Process. There must be a meeting of the minds, as in a contract. There was not a meeting of the minds in this case. There must be statues in the regulations, informing all Courts what information needed, to insure service is taking place. Very few veterans have the ability to understand law or have money enough to afford a lawyer. In both cases above, I fall short. The Supreme Court communicates well so can the lower Courts, comply with the requirements of service. The VA is required to insure proper understanding between veteran and the VA administration.

> "The notice must be sufficient to enable the recipient to determine what is being proposed and what he must do to prevent the deprivation of his interest (Goldberg & Kelly 397 U.S. 254, 267-68(1970)."

I would like to use a notice that this Court sent to me this week as an example. I opened the letter, the first thing that I saw was my check being return, I said to myself "oh, no". I read the letter and it stated "... extended the time to and including 28 DEC 1998."

A) It had all the information that was needed.
B) It confirmed the date I had marked on the calendar.
C) I knew my request for an extension was granted.
D) The error that I made by sending the check was corrected.
E) The Court was waiting for my input by 28 DEC 1998.

The notice that the VA sent me did not tell me how long I had until the paperwork was due into the Federal Circuit Court of Appeals, and what a file date meant. The notice had a regulation number on it. They sent me another notice that had Rule 42 on it. The normal veteran does not have any law training, nor speak the language. If the VA would like to communicate, the VA must do it on the veteran's level. Every notice that I have received from

the VA had the number of days located somewhere in the notice (example VA Form 4107). So I thought, that the VA would send something with the number of days I had to file. I waited, that was a big error that will never be repeated. About 64 days later, I was talking to a Disabled American Service Representative and he informed me that I missed the Court date and the only chance that I had was to throw myself on the mercy of the Court. I realize that I do not have the right to offend any Court. I did that at the Federal Circuit Court level and my case was sent to the U.S. Supreme Court.

Point of Law:

> "Notice: Service of Process. ' ...An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.' Mullane v. Central Handover Bank & Trust Co., 339 U.S. 306, 314 (1950)"

The VA did not give me the period needed to apply to the next higher Court, is against the above case, because in the notice I must be afforded the right to Due Process.

> "When is Process Due, -- The extent to which procedural due process must be afforded the recipient is influenced by the extent to which he may be 'condemned to suffer grievous loss,' . . . and depends upon whether the recipient's interest in avoiding that loss outweighs the governmental interest in summary adjudication." Goldberg v. Kelly, 397 U.S. 245, 262-63 (1970).

Losing right to life and quality of life due to non-treatment of heart disease is a "grievous loss."

There were several things taking place at the time this case was in adjudication:

A) I just had an angioplasty on 10 FEB 1997
B) On 13 MAR 1997 I had a five-vessel bypass
C) I did request the VA to send their correspondence to me via certified mail, the VA refused

My Medical Situation at that time:

D) My sternum had not connected (still has not)
E) My bladder did not work
F) I had pneumonia
G) I was under a lot of different prescribed drugs
H) My mental ability was diminished and still is due to the drugs and surgery.
I) Still 100% disabled according to Dr. Chavez for my heart

My Argument

The VA's contention of not having a requirement to serve me with notice was because I had a pro bono lawyer at COVA. However, the pro bono lawyer was only available to me during the COVA appeal. That lawyer didn't give me the number of days require to report to the next Court and neither did the VA informing me of the Court date for the Federal Circuit Court of Appeal.

The point at which the case was invalid is when the USAF and VA started lying to the Court and practice non-treatment for hypertension and coronary ischemia. This started with the Regional Court at St Paul and continued though COVA And when:

A) The VA used a perjured report from doctor Gallogly, when they had the hospital report (Appendix D). Page VIII
B) The VA did not show all the characteristics of the Angina Pectoris that took place on 31 JAN 1966 and 8 OCT 1973 and insured that the VA courts would not see them.
C) The VA crossed out six high blood pressure readings and shows the different Court false evidence.

D) The VA misdirects the Court. Example: Telling the Court that the EKG on 21 JAN 1974 was negative, when it was positive for Coronary Ischemia, thereby misreading the EKG and perjuring themselves.

E) The VA took away Fourteenth Amendment, Right to Life clause by not treating my Hypertension and Coronary Ischemia, which was indicated in my USAF and VA hospital records.

F) The VA took away the Fourteenth Amendment under the Due Process clauses by not have qualified people evaluate my records.

G) The VA did not assign someone that was knowledgeable enough to read EKG. Not one time but from 1974 to present date.

H) The VA broke 18 USC § 1503, 1505, 2071, Geibel v. U.S., 667 F. Supp. 215, affirmed 845 F.2d 1011, medical malpractice, Public Law 105-111 and its intent House of Representatives, Report, 105-52 and the Fourteenth Amendment Due Process and Right to Life Clauses, not once but several times.

I) The VA had my entire record out six times, three different times the VA has had my entire USAF medical records out for evaluation. The VA Courts three times has had them out three times, to study for heart conditions specifically. The VA should have seen the blood pressure of 190/130 that is classified as "very severe high blood pressure" according to Dr. DeBakey's book. The VA could have treated my hypertension and coronary disease, before my heart was damaged. The USAF and VA choose not to treat the Hypertension and Coronary Ischemia or pay benefits required by Congress.

J) Two EKG's were positive for Coronary Ischemia, one the VA did not present to the Court. The other EKG was read negative, when it was positive.

K) The USAF and VA did not treat my hypertension and coronary ischemia effectively starting in 1969 to present date.

The above statements are true, but we need something in the law.

This case has been in the VA Court system since 1993. From my understanding after a by-pass surgery, a person has an average 10 years to live. This is my only chance to be heard outside of the VA system. The VA will not let the veterans have justice, on any level:

A) The VA does not have justices in their own system. In the 38 CFR's if the veteran lies under oath he receives punishment from the VA (FBI is located at BVA). If the VA lies nothing is done, (they do not take an oath), The VA I.G. is completely ineffective tool. Three times, I have sent paper work that is before this Court with nothing being done. There are not any normal checks and balances to keep the VA from taking the Constitutional Rights from the veteran.

B) The VA writes up a basis case in favor the VA and not the Veteran.

C) The VA controls the paper work to the point that the veteran does not know what is available to him. Example: How to get hospital reports, doctor notes, etc.?

To this date, this case has not been heard in any court.

> "Proceedings in Which Procedural Due Process must be Observed. —While due notice and reasonable opportunity to be heard to present one's claim or defense have been declared to be two fundamental conditions almost universally prescribed in all systems of law established by civilized countries. Twining v. New Jersey, 211 U.S. 78, 110 (1908); Jacob v. Roberts, 223 U.S. 261, 265 (1912)"
>
> 38 CFR § 3.102, "When, after careful consideration of all procurable and assembled data, a reasonable doubt arises regarding service

origin, the degree of disability, or any other point, such doubt will be resolved in favor of the claimant."

The USAF and VA are "combination agencies," some of their functions are:

1) The VA is the administrator for the veterans and his records, 2) Primary heath provider, 3) Adjudicator, 4) investigator, and 5) Creator of the "Statement of Case" which is used against the veteran. The veteran is not provided a copy of this important document, for defense 6) Benefits 7) Information provider (telling whom, what, when, why and how to receive VA benefits, to include dates needed to apply to the next court for appeal, etc). They have failed in all seven requirements without regard of 18 USC series, 38 USC series, 38 CFR series and the Fourteenth Amendment, Due Process and Right to Life causes. The USAF and VA have more than average power over the individual. Therefore, there should be more checks and balances than a normal agency to insure the individual right under the constitution. The only agency the VA answers to is themselves (this includes the VA Inspector General), and the only check and balances are outside the VA system. Example: The Federal Circuit Court and the U. S. Supreme Court.

All the VA had to do was inform me of the timeline the U.S. Supreme Court did. This is one of the many functions of a combination agency. After over twenty years in the service, you have faith in the people assigned over you without question. That is the reason it took me so long to question the VA. The Veteran looks for all of the information needed to come from the VA. The only benefactor for not letting me know the time for appealing, is the VA. The only benefactor of not treating the hypertension and coronary ischemia is/was the VA and USAF. This complete case should have been taken care of before 2 JUN 1974 in 1969. I would have been paid medical disability from 2 JUN 1974 and been given the much needed medicines for my sickness. It is

atrocious to think that the USAF and VA would not treat a medical sickness in the hopes of never paying. The USAF and VA, when it comes time to pay the arrearage has:

A) Destroy paper work B) prevaricate C) use perjured information D) Give incorrect service (which I apologize to the Court for any wrong doing that I may have been guilty of) E) will not allow Due Process to take place.

When is Process Due. —"The very nature of due process negates any concept of inflexible procedures universally to every imaginable situation." Cafeteria & Restaurant Workers Union v. Elroy, 367 U.S. 886, 894-95 (1961).

CONCLUSION

The petition for a writ of certiorari should be granted.

March 18, 1999

Respectfully submitted,
Wilson M. Krueger, Jr.

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

98-7058

WILSON M. KRUEGER, JR.,
Claimant-Appellant,
V.
TOGO D. WEST, JR.,
Secretary of Veterans Affairs,
Respondent-Appellee.

Before LOURIE, CLEVENGER, and GAJARSA, Circuit Judges.

LOURIE, Circuit Judge.

ORDER

Wilson M. Krueger, Jr. submits four letters (received by the court on May 11, 1998, May 22, 1998, May 27, 1998, and July 8, 1998, respectively),[1] a response to the court's April 24, 1998 order directing Krueger to show cause why his appeal should not be dismissed as untimely, and two supplemental responses.

The Court of Veterans Appeal received Krueger's notice of appeal 70 days after that court entered judgment. Because it appeared that Krueger's appeal was untimely, this court directed Krueger to respond to the timeliness issue.

In his response, Krueger, who is proceeding pro se, asks that this court review his case and states that the Department of Veterans' Affairs "has not assisted me in (the] development of this case" and "[t]hey did not inform me of the 60 day time limit in filing my appeal to the Federal Circuit Court."[2]

Krueger's status as a pro se litigant does not excuse the late filing, and this court does not have discretion to waive the timeliness requirement. See Fed. R. App. P. 26(b) ("The court for good cause shown may upon motion enlarge the time prescribed by these rules but the court may not enlarge the time for filing a notice of appeal."). A notice of appeal of a judgment of the Court

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1 In the May 22, 1998 letter, Krueger requests that the court "accept" certain records for filing. Krueger's other letters also attach various items. In view of the dismissal of Krueger's appeal, his request to file the records is moot.

of Veterans Appeals must be filed with that court within 60 days after entry of judgment. See 38 U.S.C. § 7292(a); 28 U.S.C. § 2107. That time period is mandatory and jurisdictional. See Browder v. Director, Dep't of Corrections of Ill., 434 U.S. 257, 264(1987). Without a timely filed notice of appeal, this court is without authority to review Krueger's case.

Accordingly,
IT IS ORDERED THAT:
(1) The appeal is dismissed.
(2) Each side shall bear its own costs.

FOR THE COURT

Signed
Alan D. Lourie
Circuit Judge
July 28, 1998

FILED
U.S. COURT OF APPEALS FOR
THE FEDERAL CIRCUIT
JUL 2 8 1998
JAN HORBALY
Clerk

98-7058

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2 The court notes that the Secretary, who was the opposing party in Krueger's appeal before the Court of Veterans Appeals, would have no obligation to inform Krueger of the statutory time limit to appeal.

CC Wilson M. Krueger, Jr.
Franklin E. White, Jr., Esq.

s11

APPENDIX B

I

UNITED STATES COURT OF VETERANS APPEALS

No. 96-212

WILSON M. KRUEGER, JR., APPELLANT,
V.
TOGO D. WEST, JR.,
ACTING SECRETARY OF VETERANS AFFAIRS,
APPELLEE.

Before FARLEY, IVERS, and GREENE, Judges.

ORDER

Note: Pursuant to U.S. Vet App. R. 28(i),
this action may not be cited as precedent.

On November 19, 1997, the Court, in a memorandum decision affirmed the January 25, 1996, decision of the Board of Veterans' Appeals which denied entitlement to service connection for cardiovascular disease, including hypertension, angina, and a myocardial infarction. On January 9, 1998, the appellant filed a timely motion for reconsideration or, in the alternative, for review by a three-judge panel.

Upon consideration of the foregoing, the parties prior pleadings, and the record on appeal, it is by the single judge

ORDERED that the appellants motion for reconsideration is denied. It is by the panel

ORDERED that the appellant's motion for review by a panel is denied.

DATED: JAN 30 1998 PER CURIAM.

Copies to:
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Beltsville, MD 20705

General Counsel 27)
Department of Veteran Affairs
810 Vermont Avenue, NW
Washington D.C. 20420

jmp

Not published
UNITED STATES COURT OF VETERANS APPEALS
No. 96-212
WILSON M. KRUEGER, JR., APPELLANT,
V.
Togo D. WEST, JR.,
ACTING SECRETARY OF VETERANS AFFAIRS, APPELLFF.

JUDGMENT

The Court has issued a decision in this case, and has acted on a motion for reconsideration or review of that decision under Rule 35 of the Courts Rules of Practice and Procedure.

Under Rule 36, judgment is entered this date.

DATED: JAN 30 1998

FOR THE COURT:
ROBERT F COMEAU
Clerk of the Court

Signed, Karen Meyers
Deputy Clerk

Copies to:
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Beltsville, MD 20705

Deputy Clerk General Counsel (027)
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810 Vermont Avenue, NW
Washington, DC 20420

APPENDIX C

I

UNITED STATES COURT OF VETERANS APPEALS
No. 96-212

WILSON M. KRUEGER, JR., APPELLANT,
V.
HERSHEL W. GOBER
ACTING SECRETARY OF VETERANS AFFAIRS, APPELLEE.

Before IVERS, Judge.

MEMORANDUM DECISION ANNOTATED
(Conclusion Only)

IVERS, Judge: The veteran appeals a January 25, 1996, decision of the Board of Veterans' Appeals (BVA or Board) which denied his claim for service connection for cardiovascular disease, including hypertension, angina, and a myocardial infarction. Both parties filed briefs. The Court has jurisdiction of the case under 38 U.S.C. § 7252(a). For the reasons stated below, the Court will affirm the decision of the BVA.

CONCLUSION

Upon consideration of the record, the Secretary's brief, and the appellant's brief, the Court holds that summary disposition is appropriate under *Frankel v. Derwinski*, 1 Vet.App. 23 (1990). In *Edenfield v. Brown*, 8 Vet.App. 384 (1995) (en banc), the Court affirmed the disallowance of the claim despite the fact that the BVA had found the claim well grounded and the Court determined that the claim was not well grounded. Therefore, the January 25, 1996, decision of the BVA is AFFIRMED.

DATED: NOV 19 1997